

February 3, 1999



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STATE OF TEXAS

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Ms. Tenley Aldredge
Assistant County Attorney
County of Travis
P.O. Box 1748
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OR99-0308

Dear Ms. Aldredge:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121535.

Travis County (the "county") received a request for a copy of internal affairs investigation 98-81. You have provided a copy of the responsive information. You contend that this information is excepted from disclosure by sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law." The "informer's privilege" is applied under this section of the Open Records Act. Open Records Decision No. 549 at 4 (1990). For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 at 2-5 (1988), 391 (1983). The informer's privilege serves to protect the flow of information to a governmental body. Open Records Decision No. 549 (1990). Although you contend that "several inmates" statements are contained in this file, our inspection of the submitted information revealed no informants other than police officers. We are aware of no court ruling or issued opinion of this office that extends the informer's privilege exception to statements made by police officers in the performance of their duties. As these officers have the affirmative duty to respond to internal investigation inquiries, it cannot be said that the purpose of the informer's privilege is served by excepting their statements from disclosure. Therefore none of the subject information may be withheld pursuant to the informer's privilege.

Section 552.101 also excepts from public disclosure information deemed confidential by statute. Texas law prohibits the public disclosure of the results of polygraph examinations. V.T.C.S. art. 4413(29cc) Our review of the submitted information reveals the results of such an examination. The county must not release these results except as specifically provided by section 19A of article 4413(29cc), V.T.C.S. *See also* Open Records Decision No. 430 (1985) (enumerating persons and entities to whom information acquired from a polygraph examination may be disclosed). We have marked the pertinent information to indicate that it can not be released excepts as provided by statute. The mere fact that a polygraph examination has been conducted, however, is not confidential under the statute.

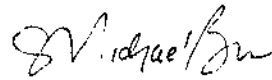
You urge section 552.111 of the Government Code. Section 552.111 excepts from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 at 5b (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). However, an agency's policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues ORD 615 at 5-6. In this case no policy considerations are raised by the subject information. None of the submitted information may be withheld pursuant to section 552.111 of the Government Code.

You have also urged section 552.108 of the Government Code. One of the purposes of this exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture. Open Records Decision Nos. 133 (1976), 127 (1976). However, here we note that the internal investigation did not result in a criminal investigation. Investigations into non-criminal matters are not excepted from disclosure by Government Code section 552.108. *Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (predecessor statute to section 552.108 not applicable where no criminal investigation resulted). We conclude that you have not demonstrated how the subject information deals with the detection, investigation, or prosecution of crime or how its release would interfere with detection, investigation, or prosecution of crime. The information may not be withheld pursuant to section 552.108 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as

a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Michael Jay Burns".

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 121535

Enclosures: Marked documents

cc: Mr. Michael Digiantonio
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(w/o enclosures)